

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA

ROBERT PARK ARBUCKLE,)	
)	
Plaintiff,)	
)	
)	CIV-11-976-W
v.)	
)	
UNITED STATES OF AMERICA,)	
)	
Defendant.)	

REPORT AND RECOMMENDATION

Plaintiff, a federal prisoner appearing *pro se* and *in forma pauperis*, has filed this action seeking damages from the Defendant United States of America for alleged injuries incurred at the Federal Correctional Institution, El Reno, Oklahoma (“FCI El Reno”). Although Plaintiff does not provide a specific statutory basis for his action, it appears he is seeking damages under the Federal Tort Claims Act because he alleges he has exhausted his administrative remedies for a tort claim “and is now filing suit.” Complaint, at 2. The matter has been referred to the undersigned Magistrate Judge for initial proceedings consistent with 28 U.S.C. § 636(b)(1)(B).

On September 13, 2011, the undersigned entered an Order (Doc. # 7) directing that the Complaint with accompanying summons be served on the Defendant in accordance with the Federal Rules of Civil Procedure Order. Plaintiff subsequently filed a Pro Se Litigant’s

Request for Issuance of Summons (Doc. # 9) in which Plaintiff requested that the Court Clerk issue a summons directed to the “Warden, El Reno FCI” at the address of the correctional institution. Consistent with Plaintiff’s request, summons papers were issued by the Court Clerk and delivered to the United States Marshal’s Service (“USMS”) for service. On November 10, 2011, the USMS filed a return of service (Doc. # 11) indicating that the Warden of FCI El Reno was served with process on October 21, 2011. Plaintiff has now moved for a default judgment (Doc. # 15) as to Defendant United States of America. Plaintiff has not, however, properly served Defendant United States of America in accordance with the Federal Rules of Civil Procedure. See Fed.R.Civ.P. 4(i). Therefore, his Motion for Judgment by Default (Doc. # 15) should be denied.

RECOMMENDATION

Based on the foregoing findings, it is recommended that the Motion for Judgment by Default (Doc. # 15) be DENIED. Plaintiff is advised of his right to file an objection to this Report and Recommendation with the Clerk of this Court by January 26th, 2012, in accordance with 28 U.S.C. § 636 and Fed. R. Civ. P. 72. The failure to timely object to this Report and Recommendation would waive appellate review of the recommended ruling. Moore v. United States of America, 950 F.2d 656 (10th Cir. 1991); cf. Marshall v. Chater, 75 F.3d 1421, 1426 (10th Cir. 1996)(“Issues raised for the first time in objections to the magistrate judge’s recommendations are deemed waived.”).

This Report and Recommendation does not dispose of the issues referred to the

undersigned Magistrate Judge in the captioned matter.

ENTERED this 6th day of January, 2012.



GARY M. PURCELL
UNITED STATES MAGISTRATE JUDGE